

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4251 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHAGWANBHAI DEVJIBHAI PATEL DODA (PATEL)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4251 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MS AC RAVAL, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 11-01-2004. By the said order, the petitioner is detained as a "dangerous person" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases pending against the petitioner. All these cases are registered under Section 379 of I.P.C. It is alleged that the petitioner is committing theft of Hero Honda motor cycle. The detaining authority has also recorded statements of some witnesses. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Mr.Prajapati, learned advocate for the petitioner submitted that though other points are available, he is confining his argument only qua delay in deciding representation of the petitioner. He submitted that the cases registered against the petitioner can, at the most, be said to be the cases of breach of law and order and not of public order. He further submitted that the petitioner has made a representation on 26th March, 2004 against his detention order, which was received by the detaining authority on 6th April, 2004. It is submitted that the said representation of the petitioner was forwarded to the State Government on 10th April, 2004 and the same was decided by the State Government on 17th April, 2004. It is submitted that therefore, there is a delay in sending the representation of the petitioner to the State Government by the detaining authority as well as delay in deciding representation by the State Government. Therefore, on the ground of delay in dispatching as well as deciding representation, order of detention is required to be quashed and set aside.

3) To substantiate his say, the learned advocate for the petitioner has relied upon a decision of this Court in NARAYAN TUKARAM BADDI v. State of Gujarat & Ors. reported in 1996 (1) GLR 31, wherein on the ground of unexplained delay in considering the representation, this Court has set aside the detention order. In the aforesaid case, the Court was concerned with a case wherein the petitioner was detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The detenu therein made a representation, which was disposed of after a considerable delay and delay was not satisfactorily explained. This Court held that the authorities may act with utmost promptness in disposing of the representation. While quashing the detention order passed against the detenu, this Court held that

right is guaranteed to every detenu of making representation at the earliest opportunity against the order of detention and as a necessary corollary by using words "as soon as may be" in Article 22 (5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenu of the grounds of detention is reflected. This Court further observed that once the earliest opportunity is provided to make a representation against the order of detention, correspondingly, there is a constitutional obligation for the speedy and expeditious consideration of such representation by the authority. This Court further held that utmost promptitude, expedition and diligence is expected from the authority to consider such representation. Even though no time limit is prescribed for the purpose of deciding representation, any indifference, avoidable delay or remissness on the part of the authority in considering the representation would vitiate the continued detention of the detenu.

4) Unfortunately, no reply has been filed by the respondents controverting the averment made in the petition about delay in dispatching as well as deciding representation. Therefore, it is clear that the representation of the petitioner was received by the detaining authority on 6th April, 2004 and the same was sent to the State Government 10th April, 2004 and the same was decided on 17th April, 2004. As per the letter dated 17th April, 2004 of Section Officer of Home Department, which was given to the petitioner, it is clear that the representation of the petitioner was received by the State Government on 13th April, 2004 and the same was decided on 17th April, 2004 by the State Government. Therefore, on the ground of delay in dispatching as well as deciding representation, this petition is required to be allowed.

5) At this stage learned advocate for the petitioner has made a voluntary statement that the petitioner will not enter Surat city upto 31st October, 2004. This statement is recorded and the police authority is directed to monitor whether this statement is complied with or not.

6) In view of above discussion, this petition is allowed. The continuous detention of the detenu is held to be illegal and the detenu, Bhagwanbhai Devjibhai Doda (Patel) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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